

## PHASE I ENHANCED 9-1-1 SERVICE AGREEMENT

This Phase I Enhanced 9-1-1 Service Agreement, including all Attachments and Addendum appended hereto ("Agreement"), is made between the City of Lincoln, a governmental entity established and operated pursuant to the laws of the state of Nebraska ("PSAP") and ALLTEL Nebraska, Inc., a Delaware Corporation, and its affiliates and subsidiaries ("LEC") (collectively the "Parties") as of the \_\_\_\_\_ day of \_\_\_\_\_, 2004 ("Date of Execution"). ALLTEL Nebraska, Inc. ("LEC") is the 9-1-1 service provider for PSAP.

### RECITALS

The Federal Communications Commission's ("FCC") E9-1-1 rules for Phase I implementation, 47 C.F.R. Section 20.18(d) (the "Rules"), require that certain Commercial Mobile Radio Service ("CMRS") carriers transmit all 9-1-1 calls initiated by a person dialing 9-1-1 on a wireless phone using a compliant radio frequency protocol of the serving carrier to a designated Public Safety Answering Point ("PSAP").

The Rules further require that where a PSAP has (1) made a valid request pursuant to the Rules, (2) has the capability of receiving and utilizing the data elements associated with E9-1-1 service, and, (3) a mechanism for the recovery of reasonable PSAP costs relating to the provision of such service is in place, the CMRS carrier must provide a call back number (when available) for a person placing a 9-1-1 call from a wireless telephone, and the location of the cell site or base station receiving a 9-1-1 call from a wireless telephone.

It is the intent of the Parties that funding for all costs associated with this agreement will be provided by the Enhanced Wireless 911 Fund pursuant to 2001 Laws Neb. 585.

LEC is certified by the Nebraska Public Service Commission to provide local exchange service in PSAP's geographic area in accordance with LEC's Local and General Exchange Tariff.

LEC will provide the information to PSAP under the terms and conditions contained herein.

### AGREEMENT

In consideration of the mutual promises and covenants stated herein, the Parties agree as follows:

**1. Definitions.** The following terms have the meanings stated below:

"9-1-1" is intended as a universal emergency telephone number which enables telecommunications users to have direct access to a PSAP.

"9-1-1 call" is a call made by a Wireless End User that utilizes LEC's wireline 9-1-1 network, initiated by dialing "9-1-1" (and, as necessary, pressing the "Send" or analogous transmitting button) on a Wireless Handset.

"9-1-1 Operator" is the PSAP operator receiving 9-1-1 calls.

"9-1-1 Service Provider" is the current operator of the selective router that provides the interface to the PSAP for 9-1-1 service.

"Activation Date" shall mean the proposed date for the implementation of the Services for a given Service Area.

"Automatic Number Identification" (ANI) shall mean a ten digit call back number for a person placing a wireless 9-1-1 call.

"Automatic Location Identification" (ALI) Database is a computer database used to update the Call Back Number information of Wireless End Users and the Cell Site/Sector Information.

"Centralized Automatic Message Accounting" (CAMA) shall mean a signaling protocol providing the means for interconnection with Vendors, as that term is defined below.

"ALI Database" shall mean the Automatic Location Identification database currently owned and operated by the 9-1-1 service provider. The Parties agree that the term "ALI" as used in this Agreement, does not have the same meaning as that term is used in the FCC E9-1-1 rules for Phase II implementation.

"Call Back Number" shall mean the MIN or MDN, whichever is applicable, of a Wireless End User who has made a 9-1-1 call, which usually can be used by the PSAP to call back the Wireless End User if a 9-1-1 call is disconnected. In certain situations, the MIN or MDN forwarded to the PSAPs may not provide the PSAP with information necessary to call back the Wireless End User making the 9-1-1 call, including, but not limited to situations affected by illegal use of Service (such as fraud, cloning, and tumbling) or as a result of FCC requirements for the LEC or the WSP to process 9-1-1 calls from handsets without a service subscription.

"Cell Site" is a radio base station that receives and transmits wireless communications initiated by or terminated to a Wireless Handset, and links such telecommunications to the respective WSP's network for routing.

"Cell Sector" is an area, geographically defined by WSP's and consisting of a certain portion of all of the total coverage area of a Cell Site.

"Cell Site/Sector Information" is information that indicates, to the receiver of the information, the location of the Cell site initially receiving a 9-1-1 call initiated by a Wireless End User, and which may also include additional information regarding a Cell Sector.

"Cell Sector Identifier" is the unique numerical designation given to a particular Cell Sector that identifies that Cell Sector.

"Emergency Service Number (ESN) Routing Code" is a number stored by the selective router used to route a call to a particular PSAP.

"Emergency Service Routing Digits" (ESRD) is a routing number translated from the Cell Sector Identifier that routes the 9-1-1 call to the appropriate PSAP. This number is further used as the search-key for the corresponding 9-1-1 service provider ALI Record.

"FCC" refers to the Federal Communications Commission.

"Fraud" shall have the meaning set forth in Section 16 below.

"LEC" shall mean Local Exchange Carrier providing the 9-1-1 network to the PSAP.

"MDN" shall mean Mobile Directory Number (the wireless caller's callback number).

"MIN" shall mean Mobile Identification Number (the wireless caller's callback number)

"Mobile Switching Center" (MSC) is a switch that provides stored program control for wireless call processing.

"PCS" shall mean Personal Communications Services, using spectrum in the frequency bands 1850 MHz to 1910 MHz and 1930 MHz to 1990 MHz licensed from the FCC.

"Phase I E9-1-1 Service" shall mean the service that LEC will coordinate and facilitate with each WSP to provide to 9-1-1 PSAP pursuant to the terms and conditions of this Agreement.

"Public Safety Answering Point" (PSAP) shall have the meaning ascribed to it above. The term "PSAP" as used in this Agreement to describe obligations and responsibilities, may include one or more PSAPs, all within the jurisdictional boundaries of PSAP. PSAP may also mean the entity authorized to receive 9-1-1 calls and route them to emergency personnel.

"Pseudo-ANI" (pANI) shall mean a special call identification number that identifies a particular cell site or sector, and is used for 9-1-1 call routing.

"Rules" shall mean the rules of the Federal Communications Commission for Phase I enhanced 9-1-1 services at 47 C.F.R. section 20.18(d).

"Selective Router" (SR) shall mean the 9-1-1 Tandem type switch operated by the 9-1-1 service provider used to support selective routing of 9-1-1 calls.

"Services" shall mean the services required to comply with the Rules.

"Service Control Point" (SCP) is a centralized database system used for, among other things, wireless Phase I E9-1-1 Service applications. It specifies the routing of 9-1-1 calls from the Cell Site to the PSAP. This hardware device contains special software and data that includes all relevant Cell Site locations and Cell Sector Identifiers.

"Third Party Provider" is a company other than a wireless carrier or local exchange carrier that contributes to implementing wireless 9-1-1. Intrado and TCS are examples.

"Vendor" shall mean a vendor with whom LEC or PSAP may have entered into an agreement for the provision of E9-1-1 service solutions, and who may provide many of the services necessary for deployment of the Services. **The identity of any Vendor may change during the term of this Agreement.**

"Wireless End User" is any person, regardless of their service subscription status, using the wireless network that utilizes LEC's 9-1-1 network in order to place a 9-1-1 call to PSAP.

"WSP" is any wireless service provider with cell sites/sectors served by the PSAP, or to be served by the PSAP.

## 2. Scope.

a. PSAP hereby designates the additional PSAPs listed on the attached Exhibit A to receive wireless 9-1-1 telephone calls originating within the jurisdictional boundaries of PSAP ("Service Areas"). A single Service Area shall include the geographic area covered by a specific PSAP. WSP will transmit 9-1-1 calls and the ANI and pANI to the 9-1-1 service provider for routing to the appropriate PSAP. The call flow is further described in the attached Exhibit B. Any aspect of the described call flow process is subject to reasonable modification by LEC so long as the Services are not materially diminished as a result. The Parties agree to work together in good faith for the timely implementation and activation of the Services in the Service Area and to remedy promptly any discovered errors, failures or inaccuracies relating to the delivery of the Services throughout the term of the Agreement. The Parties agree to cooperate in the routing of 9-1-1 traffic in those instances where the ANI is not available on a particular 9-1-1 call.

b. The Exhibits attached hereto and hereby incorporated into this Agreement are:

Exhibit A and all executed Addenda	Additional PSAP Information
Exhibit B and all executed Addenda	Service Description
Exhibit C and all executed Addenda	Contact List
Exhibit D and all executed Addenda	Wireless Service Work Plan
Exhibit E and all executed Addenda	Wireless Service Pricing

In the event of any conflict or inconsistency between this Agreement and the Exhibits, this Agreement shall control.

3. **Representations and Warranties.** PSAP represents and warrants that it has full legal authority to enter into this Agreement on behalf of the PSAPs listed in Exhibit A and to bind each PSAP listed in Exhibit A to the terms and conditions described herein.

4. **Term.** This Agreement will commence on the Date of Execution and continue for a period of three (3) years. Thereafter, the Agreement will continue for successive twelve (12) month periods unless either Party notifies the other in writing sixty days before the end of the term.

5. **Cost Recovery.** PSAP agrees that it will assist as necessary to coordinate LEC's reimbursement from the Nebraska Wireless Enhanced 911 Fund for LEC's costs attributable to Phase I Enhanced 9-1-1 services pursuant to Neb. Rev. Stat. §86-2201-2214. In conformity with 2001 Laws Neb. 585 and applicable Commission Rules and Regulations and orders, PSAP will make a written request for funding from the Enhanced Wireless 911 Fund for all costs associated with this agreement; and complete in a timely manner, all actions necessary to ensure LEC is reimbursed either directly from the Fund or from the PSAP for all costs associated with this agreement.

6. **Funding Contingency.** Because it is the intent of the Parties that funding for all costs associated with this agreement will be provided by the Enhanced Wireless 911 Fund, if funding for any of these costs is not so provided, such failure of funding will be a material breach and therefore cause for termination. Upon such failure of funding, either party may terminate this agreement by written notice specifying the cause for termination. No termination charges will be allowed for termination due to failure of funding.

7. **PSAP Responsibilities.**

- a. PSAP acknowledges that many of the obligations and responsibilities under this Agreement may actually be performed by Vendor or an applicable third Party. PSAP shall therefore be responsible for cooperating with third parties and Vendors with whom LEC has contracted for the provision of the Services. PSAP shall cooperate fully and work in good faith with LEC and, where necessary as determined by LEC, with third parties (including, but not limited to Vendor, software developers and hardware providers and other suppliers and manufacturers) for the successful implementation and provision of the Services. The PSAP shall have no privity of contract with any such Vendor or third party.
- b. Without limiting the generality of the foregoing, PSAP agrees to provide LEC or, where necessary as determined by LEC, Vendor with appropriate information validating PSAP service area boundaries, helping to form call routing criteria, forming and implementing data management processes and notifying Vendor if there are changes to the Service Area.
- c. PSAP agrees to:
  - i. Designate one PSAP Daily Contact who can represent the interests of the PSAP for general matters and one PSAP Emergency Contact at each PSAP to serve as a single point of contact available to LEC and Vendor 24 hours per day, 7 days per week, 365 days per year.
  - ii. Provide and verify needed data about each PSAP's existing infrastructure and any other information necessary for successful provision of the Services.
  - iii. Inform LEC or Vendor of data to be delivered with 9-1-1 calls for coordination with PSAP premise-based systems. Determine trunk sizing between LEC's Selective Router and the PSAP.
  - iv. Coordinate with the Nebraska Public Service Commission as necessary for the payment of reasonable costs incurred by LEC in the provision of services.
  - v. If necessary, augment trunks between a Selective Router / E9-1-1 tandem and any PSAP. PSAP

is responsible for congestion control management. Determine proper call routing.

- vi. Make good faith efforts to ensure that all PSAP premises equipment 1) is compatible with LEC's provision of the Services, 2) has adequate capacity to handle incoming circuits in accordance with industry standards, and 3) receives data in a format acceptable to PSAP.
- vii. Inform LEC and Vendor or third party of any PSAP system changes that may affect the Services and work with these other parties to coordinate implementation of the changes.
- viii. Cooperate in the creation of a trouble reporting mechanism and associated trouble resolution process.
- ix. Have the ability to receive the pANI with the 9-1-1 call and use that pANI to query the ALI Database in order to receive pertinent ANI and cell-site location identifier data.
- x. Upgrade facilities as necessary at its own cost to meet the service conditions established herein.
- xi. Provide reasonable access to facilities as necessary and as determined by the Parties.
- xii. Participate in required testing procedures as determined by the Parties.
- xiii. At its discretion, selectively transfer a 9-1-1 call to a secondary PSAP that serves the subscriber's location at the time of the call.
- xiv. At its discretion, call the End User back should the call be disconnected.
- xv. Respond with appropriate emergency service equipment as required by each individual call for service.
- xvi. Determine default routing.
- xvii. Provide accurate MSAG (master street address guide) data and timely updates thereto.

**8. WSP Responsibilities.** PSAP understands it is the WSP's (not LEC's) responsibility to:

- a. Contract with the 9-1-1 service provider to provide interconnection facilities. The necessary interconnection facilities will include the voice link facility between WSP Mobile Switching Center ("MSC") and the Selective Router and, if necessary, the data link facility between WSP's MSC and the 9-1-1 service provider. With the exception of WSP's responsibility for negotiating appropriate interconnection to facilitate the provision of the Services, all selective router/E9-1-1 Tandem and ALI database functions lie outside the responsibility of WSP.
- b. Make available the ANI and pANI to participating PSAPs on a per call basis for affected 9-1-1 calls.
- c. Maintain and upgrade its facilities as necessary to comply with the Rules and the terms, conditions and covenants of this Agreement.
- d. Provide the 9-1-1 service provider with pertinent cell site location and identification data and End User forecast data to support the E9-1-1 solution implementation.
- e. Transmit 9-1-1 calls from all wireless telephones that are technically capable of communicating in the 1.9 Ghz frequency band assigned for PCS over a Global System for Mobile Communication (GSM) enabled network as required by FCC rules.

- f. Provide network status updates of the respective voice and data links that interconnect WSP to the 9-1-1 service provider. Service level monitoring of the network links will be jointly provided by the 9-1-1 service provider, WSP and its vendor, if any.

9. **LEC Responsibilities.** LEC agrees to:

- a. Coordinate the implementation activities between the PSAP, WSP's and/or their Vendors/Third Parties and cooperate with all parties as needed to test and complete the Service through the LEC 9-1-1 system.
- b. Provide information required for deployment of the Service to the PSAP, WSP's or their Vendors.
- c. Cooperate with the PSAP and WSP's to create a network design to implement and support the Service.
- d. Assist PSAP in assessing compatibility of the PSAP premise equipment and determining necessary upgrades/reconfigurations. Any upgrades or reconfigurations required will be ordered, performed and billed according to the terms of sales agreements between PSAP and its equipment vendor. Such sales agreements will be separate and apart from this Agreement, and as such, will be billed in addition to this Agreement.
- e. Cooperate with PSAP, WSP's and/or their Vendors/Third Parties to put the necessary hardware, trunks, and software in place to prepare for the deployment.
- f. Accept and timely process orders from PSAP, WSP's and/or their Vendors/Third Parties to install appropriate trunk types between the MSC and the Selective Router; and the Selective Router and the PSAP.
- g. Accept and timely process orders from PSAP, WSP's and/or their Vendors/Third Parties to install and verify circuits between MSC and SCP (if applicable); and between the SCP and ALI (if applicable.)
- h. Verify circuits for ALI steering (if applicable).
- i. Accept Final Verified MSAG changes from PSAP and/or its Vendors/third parties. Load selective router tables and ALI databases as applicable to deploy the Service.
- j. Participate in test design and testing with PSAP, WSP's and/or their Vendors/third parties.
- k. Monitor LEC system performance and maintain as required.
- l. Participate in testing each new tower and cell sector.
- m. Cooperate and participate as necessary in network design changes, trunking changes, testing, PSAP initiated changes, CPE display/ALI format modifications, and jurisdictional boundary changes. Any such changes that cause LEC to incur additional expenses in materials, labor or Vendor/third party services will be billed to PSAP in addition to the terms of this Agreement.
- n. Monitor circuit availability between Selective Router and PSAP.
- o. Designate single point of contact for identifying and reporting LEC-related service issues.
- p. Enter into agreements with Vendors/Third Parties as necessary to deliver the Service to PSAP.
- q. Order, install and test all LEC network elements and equipment necessary to deliver the Service to PSAP.

- r Establish trouble reporting/resolution procedures with Vendors/Third Parties and PSAP.

**10. Third Party Responsibilities.** The Parties acknowledge that successful provision of the Services is dependent on the timely performance and cooperation of many third parties, including, but not limited to Vendor, the WSP's, software developers and hardware providers, and various other suppliers and manufacturers. This does not relieve the Parties of their obligations to comply with Rules and with State law.

**11. Verification and Acceptance.**

a. **Verification.** Five days prior to the Activation Date for the Services for a given Service Area, LEC shall notify PSAP in writing of the status of the testing and verification process for the Services with respect to that Service Area ("Notification"). The Notification shall detail any problems with the testing and verification process that would warrant a delay of the Activation Date. If LEC recommends that the Activation Date be delayed, the Parties agree to work together in good faith to remedy any problems with the Services noted in the Notification.

b. **Acceptance.** PSAP agrees that it accepts the Services implemented in each Service Area as of the actual Activation Date and that the Services as implemented on the Activation Date comply with the terms and conditions of this Agreement ("Acceptance"). Unless PSAP notifies LEC according to the procedures described below in Section 11d, PSAP Acceptance for a given Service Area includes acceptance of any problems existing with the Services that prompted LEC to recommend delay of the Activation Date in the Notification.

c. Although LEC shall use reasonable efforts to implement the Services so that they comply with this Agreement, PSAP acknowledges that LEC's inability to remedy problems raised in the Notification for a given Service Area or to complete the verification and testing process, may significantly increase errors, inaccuracies and failures with the delivery of Services in that Service Area.

d. **Notification of Non-acceptance.** If, for any reason, PSAP does not wish to give Acceptance as of the scheduled Activation Date, PSAP shall notify LEC in writing no later than five days prior to the Activation date and such notice shall include a detailed explanation for PSAP's non-acceptance. Upon the delivery of such notice, the Parties shall, prior to the relevant Activation Date, agree in writing to delay the Activation Date for the relevant Service Area until a mutually agreeable date which will allow LEC to 1) complete verification and testing 2) work with PSAP to resolve any problems raised in the relevant Notification, if applicable, and 3) work with the PSAP to resolve any reasonable problems raised by PSAP in its notice of non-acceptance. PSAP's acceptance shall be deemed received by LEC upon activation of Services on the new Activation Date.

e. **Timing.** The Parties acknowledge that failure of third parties to perform necessary acts may result in untimely performance by the Parties, any schedule or timeline created for implementation of Services shall only serve as a guideline, which both Parties shall work in good faith to meet.

**12. Parties' Obligations with Respect to Confidential Information:** The Parties agree that issues governing the use and disclosure of Confidential Information, as defined below, provided to or made available to the PSAP by LEC will be governed by the following provisions:

a. **Non-Disclosure Agreement.** The Parties may have a Non-Disclosure and Confidentiality Agreement ("NDA") in place. Consistent terms in the NDA are hereby incorporated into this Agreement.

b. **Definition of Confidential Information.** As used in this Agreement, the term "Confidential Information" means all information, of any nature and in any form, regardless of when given, that (i) is disclosed or provided by or through LEC to the PSAP pursuant to performance under any enhanced 9-1-1 related contract between LEC and the PSAP, and (ii) has been clearly marked or indicated as being confidential by LEC. Information falling

within this definition shall be treated by the PSAP as confidential proprietary information of LEC, pursuant to the provisions of the Nebraska Open Records Act, Neb. Rev. Stat. §84-712.05(3), and under any rule of court. Information not so marked will not be so considered.

c. **Use of Confidential Information.** Except as expressly provided in this Agreement or as otherwise mandated by the Nebraska Open Records Act, or other applicable law, the PSAP will not disclose Confidential Information to anyone without the prior written consent of LEC. The PSAP will not use, or permit others to use, Confidential Information for any purpose other than for planning and negotiating with LEC for the provision by LEC of wireless enhanced 9-1-1 service to the PSAP, the completion of other steps undertaken by the parties in furtherance thereof, or other actions incidental to the performance and enforcement of enhanced 9-1-1 contracts between the PSAP and LEC, including but not limited to auditing of records of LEC by the PSAP Auditor and/or other representatives of the PSAP. The PSAP will take all reasonable measures to avoid disclosure, dissemination or unauthorized use of Confidential Information, including, at a minimum, those measures that it takes to protect its own Confidential Information of a similar nature.

d. **Open Records Requests.** The parties recognize that the mere marking of a document as "Confidential" does not render it conclusively confidential under the Nebraska Open Records Act. Consequently, in the event that the PSAP is served with an Open Records Request or subpoena from any third party requesting all or part of any Confidential Information as defined herein, the PSAP shall give timely notice to LEC of such request or subpoena within the time parameters of the Nebraska Open Records Act or of any applicable court rule. In that event, LEC agrees upon receipt of actual notice from the PSAP of such Open Records Request or subpoena to immediately undertake to defend such Confidential Information from disclosure pursuant to the Nebraska Open Records Act or applicable court rule and shall defend, save and hold harmless and indemnify the PSAP and its agents and employees with respect to such issues.

e. **PSAP Personnel.** The PSAP will restrict the possession, knowledge, development and use of Confidential Information to its employees, agents and subcontractors (collectively, "personnel") who have a need to know Confidential Information in connection with the purposes set forth in Subsection B above. The PSAP's personnel will have access only to the Confidential Information they need for such purposes. The PSAP will ensure that its personnel comply with this Agreement.

f. **Ownership and Return of Confidential Information.** All Confidential Information will remain the exclusive property of LEC and the PSAP will have no rights, by license or otherwise, to use the Confidential Information except as expressly provided herein. Upon the written request of LEC, the PSAP will promptly return or destroy all tangible material embodying Confidential Information (in any form and including, without limitation, all summaries, copies and excerpts of Confidential Information) except as otherwise required by law.

g. **Injunctive Relief.** The PSAP acknowledges that disclosure or use of Confidential Information in violation of this Agreement could cause irreparable harm to LEC, for which monetary damages may be barred by State law or may otherwise be difficult to ascertain or be an inadequate remedy. The PSAP therefore agrees that LEC will have the right, in addition to other rights and remedies set out hereunder, to seek and obtain injunctive relief for any violation of this Agreement.

h. **Trade Secrets and Confidential Information.** LEC shall not at any time or in any manner, either directly or indirectly, divulge, disclose or communicate to any person, firm or corporation in any manner whatsoever any information concerning any matters which are not subject to public disclosure, including without limitation the trade secrets of businesses or entities doing business with the PSAP and other privileged or Confidential Information.

13. **Limitation of Liability.** PSAP acknowledges that, as a result of various problems or failures that may occur with LEC, WSP's or third parties, some 9-1-1 calls and or related data information might be misrouted, inappropriately blocked or otherwise not delivered to the correct PSAP, or contain incorrect information.



- a. Each Party shall be solely responsible for providing facilities within its network, which are necessary for routing, transporting and measuring traffic and delivering such traffic to the other Party or receiving such traffic from the other Party.
  - b. LEC will not be liable for claims arising out of mishandled calls, failure of any of 9-1-1 service provider's or vendor's databases used to provide the Services, normal operation of LEC's network, failure of LEC's network (except as specifically provided in this Agreement) or calls which are disconnected from the network.
  - c. NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, OR SPECIAL DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO ANY LOSS OF USE, LOSS OF BUSINESS, OR LOSS OF PROFIT REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, WARRANTY STRICT LIABILITY, TORT, INCLUDING (WITHOUT LIMITATION) NEGLIGENCE OF ANY KIND AND REGARDLESS OF WHETHER THE PARTIES KNOW THE POSSIBILITY THAT SUCH DAMAGES COULD RESULT.
  - d. The parties agree that the Wireless Communications and Public Safety Act of 1999, and LEC's Local and General Exchange Tariff as filed with the Nebraska Public Service Commission is hereby incorporated into this Agreement by reference and shall govern LEC's liability and immunity for its performance under this Agreement.
  - e. Nothing contained in this Paragraph 13 shall limit either Party's liability to the other for willful or intentional misconduct.
14. **Termination.** Either Party may terminate this Agreement for cause by providing written notice specifying the cause for termination and requesting correction within thirty (30) days, if such cause is not corrected within such thirty (30) day period. Cause is any material breach of the terms of this Agreement.
15. **NO WARRANTIES.** THERE ARE NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WHICH HEREBY ARE EXPRESSLY DISCLAIMED. LEC EXPRESSLY MAKES NO REPRESENTATION OR WARRANTY AND ASSUMES NO LIABILITY REGARDING THE ACCURACY OF THE DATA PROVIDED BY ANY OTHER DATA PROVIDER.
16. **Fraud.** Fraud shall include, but not be limited to, the following: (i) accessing, altering or interfering with the communications equipment and/or information of any End User by rearranging, tampering or making any unauthorized connection with any equipment or facilities, or by or through any other fraudulent means or devices whatsoever (ii) using PCS in such a manner so as to interfere unreasonably with the use of PCS by one or more end users (iii) using PCS to convey information deemed to be unlawful (iv) any unauthorized, wrongful or misappropriated use of PCS. The Parties recognize the benefits of minimizing Fraud and agree to cooperate to minimize Fraud. Further, the Parties agree to cooperate to eliminate internal misuse of 9-1-1 and to minimize external misuse of 9-1-1. LEC agrees to use its standard procedures to detect and prevent Fraud. Notwithstanding the above, LEC shall not be liable for any costs, expenses or damages incurred as a result of the fraudulent use of a wireless handset.
17. **Uncontrollable Conditions.** Neither party will be deemed in violation of this Agreement if it is prevented from performing any of the obligations under this Agreement by reason of severe weather and storms; earthquakes or other natural occurrences; strikes or other labor unrest; power failures; nuclear or other civil or military emergencies; acts of legislative, judicial, executive or administrative authorities; or any other circumstances which are not within its reasonable control.
18. **Lawfulness.** This Agreement and the Parties' actions under this Agreement shall comply with all applicable federal, state, and local laws, rules, regulations, court orders, and governmental agency orders. Any change in rates, charges or regulations mandated by the legally constituted authorities will act as a modification of any contract to that extent without further notice. This Agreement shall be governed by the laws of the state where Service is provided. The

Parties agree to negotiate additional terms to this Agreement should there be any modifications to the current Rules.

**19. Dispute Resolution.**

- a. The Parties hereby agree to work in good faith with each other to resolve any disagreements and negotiations prior to PSAP or LEC taking any formal action.
- b. Any party may give the other written notice that a dispute exists (a "Notice of Dispute"). The Notice of Dispute shall include a statement of such party's position providing sufficient detail of the nature of the dispute in order to enable the other party to be on notice of all relevant issues. All documents and other information or data on which each party relies concerning the dispute shall be furnished or made available on reasonable terms to the other party.
- c. Any controversy or claim arising out of or relating to this Agreement, the breach, termination or validity thereof, or the transactions contemplated herein, if not settled by negotiation as set forth above, shall be settled by arbitration in the city of Lincoln, Nebraska in accordance with the American Arbitration Association Rules for Commercial Disputes, by three arbitrators, two of which will be appointed by the parties and the third arbitrator to be appointed by the arbitrators so appointed, or if no consent is reached, by the American Arbitration Association under applicable rules. The arbitration proceedings shall be conducted in the English language in accordance with the arbitration rules of the American Arbitration Association. The award rendered by the arbitrators shall be final and binding on the parties and may be entered in any court having jurisdiction thereof.
- d. It is the intent of the parties that any arbitration shall be concluded as quickly as reasonably practicable. Unless the parties otherwise agree once commenced, the hearing on the disputed matters shall be held four days a week until concluded, with each hearing date to begin at 9:00 a.m. and to conclude at 5:00 p.m. The arbitrators shall use all reasonable efforts to issue the final award or awards within a period of five (5) business days after closure of the proceedings. Failure of the arbitrators to meet the time limits of this subsection shall not be a basis for challenging the award.

**20. Advertising; Publicity.** Neither Party shall use the other Party's names, marks, codes, drawings or specifications in any advertising, promotional efforts or any publicity of any kind without the prior written permission of such other Party.

**21. Independent Contractor.** The Parties warrant and agree that they are engaged in an independent business and that they and their employees and agents will perform under this Agreement as independent contractors and not as agents or employees of each other; and that they will maintain complete control over performance by their employees, agents and subcontractors. The Parties are not liable for debts or expenses incurred by each other, their employees, agents and subcontractors. Each Party shall be responsible for its own acts and those of its agents and employees in connection with performance of this Agreement. Each Party will be solely responsible for all matters relating to payment of its employees, including compliance with workers' compensation, unemployment, disability insurance, social security withholding, and all other federal, state and local laws, rules and regulations governing such matters.

**22. General Provisions.**

- a. The failure of either party to exercise any right shall not be construed to be a waiver unless agreed upon in writing. A waiver in any one instance will not constitute an amendment to this Agreement or indicate any continued waiver of such right on any other occasion.
- b. Neither Party may assign its rights, duties or obligations under this Agreement without the prior written consent of the other, provided that LEC may assign this Agreement without PSAP's approval to any of its current or future affiliates or an entity acquiring substantially all of the assets or shares, or a controlling interest in LEC.
- c. This Agreement benefits PSAP and LEC and serves a public purpose.

- d. This Agreement constitutes the entire understanding between PSAP and LEC with respect to Service provided herein and supersedes any prior agreements or understandings.
- e. The provisions of this Agreement that, by their sense and context, are intended to survive performance by either or both parties shall also survive the completion, expiration, termination or cancellation of this Agreement.
- f. Any term or provision of this Agreement which is held to be invalid, void, unenforceable or illegal will in no way affect, impair or invalidate the remaining terms or provisions, which will remain in full force and effect, consistent with the original intent of the parties. However, if such provision is an essential element of the Agreement, the parties shall promptly attempt to negotiate a substitute therefore.
- g. No change or modification of any terms or conditions herein shall be valid or binding on either party unless made in writing and signed by authorized representatives of both parties.
- h. In no event shall any payment by the PSAP hereunder constitute or be construed to be a waiver by the PSAP of any breach of term, covenant, or condition or any default which may then exist on the part of LEC, and the making of any such payment when any such breach or default shall exist shall not impair or prejudice any right or remedy available to the PSAP with respect to such breach or default; and no assent, expressed or implied, to any breach of any one or more terms, covenants, or conditions of the Agreement shall be construed as a waiver of any succeeding or other breach.
- i. Each and every term, condition, or covenant herein is subject to and shall be construed in accordance with the provisions of Nebraska law, any applicable federal law, and the ordinances, regulations, and Executive Orders enacted and/or promulgated pursuant thereto. Such applicable law, together with the regulations of the County of Nebraska, as the same may be amended from time to time, is hereby expressly incorporated into this Agreement as if fully set out herein by this reference. Venue for any action arising hereunder not otherwise resolved pursuant to Section 19 shall be in the Lancaster County District Court in the County of Lancaster, Nebraska.
- j. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the PSAP and LEC, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreement, including but not limited to subcontractors, subconsultants, and suppliers. It is the express intention of the PSAP and LEC that any person other than the PSAP or LEC receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.
- k. The captions and headings set forth herein are for convenience of reference only, and shall not be construed so as to define or limit the terms and provisions hereof.
- l. Neither Party is authorized to act as an agent for, or legal representative of, the other Party, nor has authority to assume or create any obligation on behalf of, in the name of, or that shall be binding upon, the other Party. The parties warrant and agree that they are engaged in an independent business and that they and their employees and agents will perform under this Agreement as independent contractors and not as agents or employees or each other; and that they will maintain complete control over performance by their employees, agents, and subcontractors. The Parties are not liable for debts or expenses incurred by each other, their employees, agents and subcontractors. Each Party shall be responsible for its own acts and those of its agents and employees in connection with performance of this Agreement. Each Party will be solely responsible for all matters relating to payment of its employees, including compliance with workers' compensation, unemployment, disability insurance, social security withholding, and all other federal, state and local laws, rules and regulations governing such matters.
- m. It is understood and agreed by the parties hereto that if any part, term, or provision of this Agreement is by

the courts held to be illegal or in conflict with any law, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

n. The parties understand and agree that all terms, conditions and covenants of this Agreement, together with the exhibits and attachments hereto, if any, any or all of which, by reasonable implication, contemplate continued performance or compliance beyond the expiration or termination of this Agreement (by expiration of the term or otherwise), shall survive such expiration or termination and shall continue to be enforceable as provided herein. Without limiting the generality of the foregoing, LEC's obligations for the provision of insurance, for indemnity to the PSAP and for preserving confidentiality of trade secrets and other information shall survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

o. The parties represent and warrant that they are duly authorized and have received all necessary consents to enter into this Agreement, and that the signatories are duly authorized to bind the parties to this Agreement. Each party acknowledges that it has reviewed this Agreement and participated in its preparation and understands the provisions of this Agreement. This Agreement and any ambiguous language shall not be construed against either party for having prepared it.

p. Notices and requests required by and given in connection with this Agreement shall be in writing and deemed given as of the day they are received by (a) hand delivery, (b) overnight delivery service, (c) in the United States mails, postage prepaid, certified and return receipt requested, or (d) confirmed facsimile (confirmed with a copy sent by overnight delivery or by mail), and addressed as provided in Exhibit C.

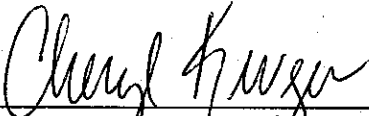
q. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

This Agreement is executed and effective as of the date first written above.

SIGNATURES:

Alltel Nebraska, Inc. ("LEC")

By:



Printed Name:

Cheryl Krueger

Title:

Director Business Solution

Date

11/22/04

City of Lincoln, Nebraska ("PSAP")

By:

Printed Name:

Coleen J. Seng

Title:

Mayor

Date

**Exhibit A**

**ADDITIONAL PSAP INFORMATION (if applicable)**

PSAP Name	PSAP Primary Point of Contact	PSAP Contact Information (including 24x7 number)
Not Applicable		

## Exhibit B

### Service Description:

#### Call Flow Description:

- The wireless end user dials 9-1-1 and presses "SEND" or "TALK"
- The WSP MSC delivers the call according to the mutually agreed upon engineering design.
- Based on the pANI, the Selective Router queries the selective routing database for the Emergency Services Number (ESN) which provides the 9-1-1 call routing information.
- The Selective Router sends the call with the pANI to the PSAP.
- The 9-1-1 PSAP system (Customer Premise Equipment or CPE) delivers the call to the PSAP operator.
- The CPE automatically uses the pANI to request information from the ALI database.
- The ALI database responds to the CPE request with the temporary record which contains the site location information and calling party number of the handset, when available.
- The PSAP CPE displays the information (including call-back number and approximate location). The display maybe on a text screen or on a map, depending on the PSAP's installed equipment.

**Exhibit C - CONTACTS LIST**

**PSAP Contacts**

Daily Contact: CAROL Ripley  
Phone: 402-441-1005  
FAX: 402-476-0528  
E-Mail: cripley@lincoln.ne.gov

PSAP Emergency Contact Supervisor on Duty - 402-441-6000  
email: com\_supers@lincoln.ne.gov

**9-1-1 Service Provider Contact:**

Name: Pam Kemper  
ALLTEL E9-1-1 Services Supervisor  
Phone: 402 437-7283  
FAX: 402 437-7470  
E-Mail: pam.kemper@alltel.com

**LEC Contacts**

Regulatory:

Steve Meradith  
Staff Manager, Government Affairs  
1440 M Street  
Lincoln, NE 68508  
Phone: 402 436-4160  
FAX: 402 436-4041  
E-mail: steve.meradith@alltel.com

Database and Operations Contact:

Ron Becker  
E9-1-1 Database Administrator  
Phone: 402 436-5246  
E-Mail: ron.becker@alltel.com

Technical:

Jim Bohl  
E9-1-1 Engineering  
1440 M Street  
Lincoln, NE 68508-2591  
Phone: 402 436-5790  
E-Mail: jim.bohl@alltel.com

## **Exhibit D - PHASE I E9-1-1 WIRELESS SERVICE WORK PLAN**

### **1. Responsibilities of LEC**

It shall be LEC's responsibility, in cooperation with PSAP and necessary third parties (including, but not limited to, Vendor, Nebraska Wireless E911 Program Director, 9-1-1 Network Provider, Host ALI Provider, SCP software developers and hardware providers, and other suppliers and manufacturers), to implement and provide Phase I E9-1-1 Service to PSAP in the agreed upon manner within the Phase I E9-1-1 Service Areas. This shall include the following:

- a. participating in network design;
- b. causing its network elements to be installed;
- c. operating, maintaining and provisioning these network elements;
- d. facilitating or participating in the development of an implementation plan which will establish target dates for actions necessary for installation and activation of Phase I E9-1-1 Service;
- e. acquiring necessary software and equipment;
- f. helping to form routing decisions;
- g. billing the 9-1-1 Governmental Entity for the Non-recurring Fee and Monthly Recurring Fee;
- h. entering into necessary interconnection agreements for interconnecting the MSC to Selective Routers and, if necessary, for interconnecting to the SCP;
- i. working with 9-1-1 Governmental Entity and, if necessary, Vendor to establish internal performance measures, including, but not limited to, statistics for call volumes, error resolutions and other critical measurements;
- j. working with the 9-1-1- Governmental Entity in the assignments of ESRDs and associated ALI database records;
- k. coordinating or participating in the adds, changes and deletions of database records in appropriate databases, including, but not limited to ALI Host database and Selective Router;
- l. nothing in this Exhibit shall be interpreted to create a third party contractual relationship between LEC and SCP providers.
- m. participating in the creation of a trouble reporting mechanism and associated trouble resolution process.

### **2. Responsibilities of PSAP**

It shall be PSAP's responsibility to work with LEC and, where necessary, with third parties (including, but not limited to, Vendor, WSP's, Host ALI Provider, SCP software developers and hardware providers, and other suppliers and manufacturers) for the successful implementation and provision of Phase I E9-1-1 Service. This shall include the following:

- a. validating 9-1-1 Governmental Entity Jurisdiction map boundaries, helping to form call routing criteria, forming and implementing data management processes of jurisdiction routing changes;
- b. participating in the development of an implementation plan which will establish target dates for actions necessary for installation and Activation of Phase I E9-1-1 Service;



- c. providing and verifying needed data about each PSAP's existing infrastructure and any other information necessary for successful installation, maintenance and provision of Phase I E9-1-1 Service, including the determination of proper trunk sizing between the MSC and the 911 selective router; and between the 9-1-1 Selective Router and the PSAP.
- d. identifying appropriate ESN Routing Codes and determining call routing;
- e. informing third-party vendors, such as Computer Aided Dispatch (CAD) providers, of data to be delivered with 9-1-1 calls for coordination with PSAP premise-based systems;
- f. augmenting the trunks, when necessary, as agreed upon by parties, between a selective router and any PSAP;
- g. ensure that all PSAP premises equipment is equipped to receive Phase I voice and data services;
- h. informing LEC of any PSAP system changes that may affect Phase I E9-1-1 Service;
- i. provide that necessary changes, modifications and/or updates are made with respect to the ALI Database for successful receipt of ALI Host Records;
- j. training 9-1-1 Operators to understand the data that they will receive about 9-1-1 calls in connection with Phase I E9-1-1 Service;
- k. supporting all testing/verification activities to be undertaken by LEC, or Vendor or third party, if applicable, in relation to this Agreement;
- l. participating in the creation of a trouble reporting mechanism and associated trouble resolution process.

3. Responsibilities of Third Parties

The Parties acknowledge that successful and timely provision of Phase I E9-1-1 Service may be dependent on the timely performance of third parties, including, but not limited to, actions that must be completed by a vendor, the 9-1-1 Network Provider, the WSP's and the Host ALI Provider, SCP software developers and hardware providers, and various other suppliers and manufacturers. This acknowledgment, however, does not relieve either party of its obligation and responsibility to comply with FCC rules and orders, including the obligation and responsibility to negotiate an appropriate agreement with such a Vendor or third party to ensure appropriate compliance with FCC rules and orders.

4. Delivery of Data Elements

LEC shall cooperate with the WSP's and their Vendors/Third Parties to deliver the data elements necessary for Phase I service via either Call Associated Signaling (CAS), Non-Call Associated Signaling (NCAS) or hybrid (i.e. CAS/NCAS) method. The parties may jointly agree to change the delivery option as technical developments require or as improved methods become available. Any costs incurred for changes will be billed in addition to the terms of this agreement.

## **Exhibit E - PHASE I E9-1-1 WIRELESS SERVICE PRICING**

### **Implementation and Maintenance of the Intrado Solution for WSP's:**

This solution required establishing connectivity between LEC ALI databases in Lincoln Nebraska, and the Intrado Wireless Gateway and databases in Texas. This connectivity allows NCAS wireless carriers, such as ALLTEL Wireless and Western Wireless, to provide dynamically updated Phase I information to the PSAP. This solution was put in place to serve all PSAP's on behalf of those WSP's who have contracted with Intrado to deliver their Phase One information.

Each PSAP's pro-rata portion of the total fees has been prepaid by the Nebraska Enhanced Wireless Fund. It is estimated that 18 PSAP's will use this solution. City of Lincoln's pro-rata portion of the fees will be 1/18<sup>th</sup> of the total Intrado fees.

LEC's time, materials and equipment required to implement the Intrado Solution has also been prepaid by the Wireless Fund. City of Lincoln's prepaid prorata portion of the LEC's fees is 1/18<sup>th</sup> of the total.

Any subsequent changes, additions, moves or reconfigurations of the Intrado Solution will be billed to the PSAP's at the appropriate prorata portion at that time for both the Intrado fees and the LEC fees directly related to these changes.

It is understood by the parties that Intrado's Total Fees and LEC's Total Fees have been prepaid in full by the Enhanced 9-1-1 Wireless Fund on behalf of all PSAP's in LEC's service area. Each PSAP that subsequently is approved for payments from the Fund derives a benefit from the prepayment of Intrado's and LEC's total fees, namely, their 1/18<sup>th</sup> share has been prepaid by the Fund.

### **Intrado Solution – Intrado's Total Fees:**

Non-Recurring:	\$19,600.00	City of Lincoln's prepaid portion:	\$1089.00
Recurring:	\$ 2,750.00	City of Lincoln's prepaid portion:	\$ 153.00

### **Intrado Solution - LEC's Total Fees (all non-recurring):**

Labor billed at \$100/hour:	\$21,150.00	City of Lincoln's prepaid portion:	\$1175.00
CISCO 1720 Routers (2):	\$ 3,200.00	City of Lincoln's prepaid portion:	\$ 178.00

### **Wireless Carrier Phase One Implementations**

The second pricing element is each WSP's Phase One Implementation. This element will be billed on a per cell sector basis for the nonrecurring charges. The monthly recurring charges will be billed on a per PANI/ESRK basis. As additional sectors and/or PANIs/ESRKs are implemented, these fees will apply.

Non-recurring per Sector:	\$750.00
Recurring per PANI/ESRK:	\$ 32.00

It is the PSAP's responsibility to forward the WSP's call routing sheets, or equivalent, to LEC for the purpose of verifying the information to be factored into the above rates and terms for the Service; and to notify LEC when PSAP becomes aware of new WSP's activating in their area, or additional towers going up in their area.

**Exhibit E Summary – City of Lincoln (Lancaster County) Phase One**

<b>PREPAID SERVICE/EQUIPMENT</b>	<b>NRC</b>	<b>MRC</b>
INTRADO	\$1,089.00	\$153.00
ALLTEL INTRADO IMPLEMENTATION	\$1,175.00	NONE
CISCO 1720 ROUTERS (2)	\$ 178.00	NONE
<b>TOTAL PREPAID</b>	<b>\$2,442.00</b>	<b>\$153.00</b>

<b>CITY OF LINCOLN TO SUBMIT TO FUND FOR PAYMENT</b>	<b>NRC</b>	<b>MRC</b>
ALLTEL	\$105,750.00	\$2,272.00
AT&T	\$74,250.00	\$2,272.00
CRICKET	\$18,000.00	\$320.00
NEXTEL	\$39,750.00	\$1,696.00
SPRINT	\$85,500.00	\$4,800.00
T-MOBILE	\$6,750.00	\$320.00
US CELLULAR	\$29,250.00	\$320.00
WESTERN WIRELESS	\$67,500.00	\$1,952.00
<b>TOTAL</b>	<b>\$426,750.00</b>	<b>\$13,952.00</b>

**NON-RECURRING Implementation Fees**

<b><u>Service</u></b>	<b><u>Unit Price</u></b>	<b><u>Sectors</u></b>	<b><u>Total</u></b>
ALLTEL	\$750.00	141	\$105,750.00
AT&T	\$750.00	99	\$74,250.00
CRICKET	\$750.00	24	\$18,000.00
NEXTEL	\$750.00	53	\$39,750.00
SPRINT	\$750.00	114	\$85,500.00
T-MOBILE	\$750.00	9	\$6,750.00
US CELLULAR	\$750.00	39	\$29,250.00
WESTERN WIRELESS	\$750.00	90	\$67,500.00
<b>TOTAL NON-RECURRING</b>			<b>\$426,750.00</b>

**MONTHLY RECURRING Fees**

<b><u>Service</u></b>	<b><u>Unit Price</u></b>	<b><u>PANI/ESRK</u></b>	<b><u>Total</u></b>
ALLTEL	\$32.00	71	\$2,272.00
AT&T	\$32.00	71	\$2,272.00
CRICKET	\$32.00	10	\$320.00
NEXTEL	\$32.00	53	\$1,696.00
SPRINT	\$32.00	150	\$4,800.00
T-MOBILE	\$32.00	10	\$320.00
US CELLULAR	\$32.00	10	\$320.00
WESTERN WIRELESS	\$32.00	61	\$1,952.00
<b>TOTAL MONTHLY</b>			<b>\$13,952.00</b>

**Exhibit E - Exclusions, Additions and Changes**

The Summary totals shown above apply only to those carriers expressly listed, and those towers and sectors specifically listed. These are the carriers, towers and sectors known to the best of LEC's ability to be served by PSAP at this time. Changes, additions and deletions will become an addendum to this Agreement.

This pricing and Agreement covers known implementation and monthly charges for the Intrado NCAS Phase One Solution. Some of listed WSPs have contracted with TCS for their NCAS Phase One Solution. There are no known monthly recurring charges for the TCS solution. There are yet-to-be determined TCS Solution implementation fees. These charges will be established at the time they are known, and will be added to this Agreement as an addendum.

This pricing and Agreement applies only to those WSPs using the Intrado or the TCS Phase One Solution. Additional charges may apply for WSPs not using these solutions. These charges will be established at the time the solution is known, and will be added to this Agreement as an addendum.

**Signatures:**

**Alltel Nebraska, Inc. ("LEC")**

By: Cheryl Kueger  
Printed Name: Cheryl Kueger  
Title: Director Business Solutions  
Date: 11/22/04

**City of Lincoln, Nebraska ("PSAP")**

By: \_\_\_\_\_  
Printed Name: Coleen J. Seng  
Title: Mayor  
Date: \_\_\_\_\_